



Filing Receipt

Received - 2022-01-04 01:30:35 PM
Control Number - 51841
ItemNumber - 24

PROJECT NO. 51841

REVIEW OF 16 TAC §25.53	§	
RELATING O ELECTRIC	§	PUBLIC UTILITY COMMISSION
SERVICE EMERGENCY	§	OF TEXAS
OPERATIONS PLANS	§	

**COMMENTS OF SOUTHWESTERN PUBLIC SERVICE COMPANY ON REPEAL
OF §25.53 AND REPLACEMENT WITH PROPOSED NEW 16 TAC §25.53**

Table of Contents

I.	Introduction.....	2
II.	Specific Rule Comments	3
	(b) Definitions.	3
	(c) Filing requirements.	3
	(g) Reporting requirements.	12
III.	Conclusion	13
	EXECUTIVE SUMMARY - COMMENTS OF SOUTHWESTERN PUBLIC SERVICE COMPANY	14

PROJECT NO. 51841

REVIEW OF 16 TAC §25.53	§	
RELATING TO ELECTRIC	§	PUBLIC UTILITY COMMISSION
SERVICE EMERGENCY	§	OF TEXAS
OPERATIONS PLANS	§	

**COMMENTS OF SOUTHWESTERN PUBLIC SERVICE COMPANY ON REPEAL
OF §25.53 AND REPLACEMENT WITH PROPOSED NEW 16 TAC §25.53**

On November 30, 2021, the Public Utility Commission of Texas (“Commission”) approved for publication and public comment proposed replacement rule 16 TAC §25.53 (“replacement rule” or “rule”) to implement §24 of Senate Bill 3 from the 87th Regular Session of the Texas Legislature (2021), and Tex. Senate Bill 3, 87th Leg. (2021) (“SB 3”), which amended Tex. Util. Code §186.007 relating to Commission Weather Emergency Preparedness Reports. Southwestern Public Service Company (“SPS”) offers the following comments for the Commission’s consideration.

I. Introduction

SPS is committed to working with the Commission to continue to ensure it is prepared to provide reliable service to its customers in all situations including those that present a threat to the continuity of service to SPS’s electric system. SPS supports the need for utilities to maintain a thorough Emergency Operations Plan (“EOP”), inclusive of its various elements, and to inform the Commission regarding that plan. SPS has recommendations for the rule in terms of protecting confidential and security-related information, providing clarity in the scope of the EOP process, and eliminating burdensome and unneeded elements. These recommendations ensure system protections which provide essential customer and system protections.

II. Specific Rule Comments

(b) Definitions.

SPS is concerned about the definition of the term “emergency” in the context of this proposed rule. SPS recommends the definition of “emergency” be refined to target events that present a credible risk to the continuity of service and only be classified as an emergency in this context if the circumstances are of sufficient magnitude that emergency conditions are declared by entities empowered to coordinate regional or state-wide responses to such event. Without this refinement the key objectives of this process - to address significant, material threats to reliability - would be diluted with numerous other situations and events that would be distracting for affected entities and the Commission from the core objectives. SPS proposes to adjust this definition in order to provide consistency for when an EOP should be implicated, including in regard to reporting requirements discussed below. SPS recommends the following revision:

(b) – Definitions

Emergency – any incident resulting from an imminent hazard or threat that endangers life or property or presents credible risk to the continuity of electric service that results in ~~The term includes~~ an emergency declared by local, state, or federal government; ERCOT; or a Reliability Coordinator that is applicable to the entity.

(c) Filing requirements.

Timeframe, initial EOP

Proposed subsection (c)(1) requires that the EOP be filed initially by April 1, 2022. This would be shortly after this rulemaking would be finalized, and the exact requirements for the EOP will not be known until the final order is adopted. In order to allow sufficient time for affected parties to develop the internal business processes, take other actions needed for compliance and prepare filings, SPS suggests that the initial filing of EOPs under the new rule be

required 90 days after final publication of the finally approved rule. In addition, the actual filed version of the EOP should be a summary version, including removal of confidential and security sensitive material as discussed below.

Scope of EOP filing – open records, burdensomeness

Under the current 16 TAC §25.53, utilities are required to maintain an EOP and file a summary of the EOP with the Commission. Furthermore, on an annual basis, utilities are required to refile the mandated summary of the EOP *if* any significant changes have been made to the plan. SPS respects the desire to increase the transparency of how utilities maintain their EOPs and the process of the reviewing and updating the plans. However, the proposed rule's requirement to annually, and possibly more than annually, file the entire EOP with this Commission risks exposure of confidential and security-sensitive information and is needlessly burdensome for affected entities and the Commission and distract from the core objectives of this process to address significant, material threats to service reliability.

Of greatest concern is that the proposed requirement to file an unredacted EOP in its entirety (subsection (c)(1)(A)) is in direct conflict with Tex. Util. Code §186.007(f), even as amended by SB 3, which requires that:

The emergency operations plans submitted for the report described by Subsection (a-1) and any subsequent plans submitted under Subsection (e) are public information except for the portions of the plan considered confidential under Chapter 552, Government Code, or other state or federal law. ***If portions of a plan are designated as confidential, the plan shall be provided to the commission in a redacted form for public inspection with the confidential portions removed.*** An electric generation entity within the ERCOT power region shall provide the entity's plan to ERCOT in its entirety. *[emphasis added]*

Clearly, the Legislature was concerned about protecting the confidentiality and security of information contained in EOPs because the unredacted versions in the possession of the Commission could become subject to potential disclosure.

SPS understands only the redacted version of the EOP would be intended to be made public, but the unredacted version as filed with the Commission would nonetheless still be subject to Texas Public Information Act (“TPIA”), Tex. Gov’t Code § 552.001 *et. seq.*, requests, from which the Commission and SPS may not be able to defend against.

While there are exceptions in the TPIA that could apply to specific information that is included in the EOPs, the burden of opposing (potentially numerous) open records requests for unredacted EOPs, or portions thereof, would be highly burdensome and costly for the Commission and for the entities that provided the information – both at the Attorney General opinion process level and potentially litigating in state District Court. If SPS’s EOP, or any other utility’s EOP, in unredacted form were to be made public, or even portions of them, information about critical infrastructure and other confidential and security-sensitive matters could be revealed. This information and review of it for applicability of existing exceptions would involve highly technical matters in the face arguments by parties aggressively seeking disclosure, to which the Attorney General and the courts may not be able to fully appreciate and apply.¹

This is precisely the scenario the Legislature intended to prevent. A better approach, consistent with the clear requirements of Tex. Util. Code §186.007(f) and the current process and rules, is for affected entities to file summaries of the EOP and provide access to the Commission

¹ Notably, while the Legislature did add protections from the TPIA in some contexts in SB 3, such as to protect disclosure of information collected and used by Texas Energy Reliability Council, new § 418.301 *et. seq.*, of the Texas Government Code, § 418.308(c) and (d) and the Texas Electricity Supply Chain Security and Mapping Committee, Texas Utilities Code new § 38.201 *et. seq.*, § 38.202(e), no such protections were provided regarding EOPs in the possession of the Commission. As discussed above, SB 3 let stand the admonition that confidential information be redacted from EOP information when provided to the Commission.

and its authorized representatives to unredacted versions when needed, the content of which is discussed further below.

Second, SPS finds it to be an unduly onerous requirement on both the affected entity and Commission Staff to re-file and review the EOP, or summaries thereof, with all of its required annexes for a change to one particular portion of the EOP. SPS understands the goal to promote and encourage the affected entities, the Commission and others to work together to best maintain service reliability and protect reliability of service. As proposed, the process of reviewing and updating the EOP would be unduly burdensome, potentially confusing, over-loading the Commission and other recipients with redundant information, and counter-productive to this goal.

SPS would instead propose two changes to the filing updates to EOPs. As mentioned above, SPS proposes that utilities be required to file a comprehensive summary of the applicable EOP in its initial filing 90 days after publication of the approved rule and an update to the summary within 30 days of any significant change to the EOP. The updated EOP summary in each filing should include an executive summation outlining the changes to the plan made since the last filing. In addition, filing entities should be required to maintain a complete EOP with all annexes as required by the rule and make it available for visual inspection by employees of the Commission and its authorized representatives who have signed an approved protective order. SPS proposes a revised, new subsection (d) which would establish the required elements of the summary EOP filing, discussed below.

Third, SPS would propose in subsection (c)(1)(C) to change “incident ” to “emergency.” SPS is concerned that the phrase “each incident” in (c)(1)(C) could result in triggering the filing of multiple after-action reports as well as a need to update the EOP several times throughout the

year – and questions the benefit of providing such a list. As discussed above, the reporting requirement should be limited to emergency events as declared by appropriate governmental and Regional Coordinator authorities.

Finally, SPS is concerned with open-ended discretion by Staff to require updates to EOPs as provided for in subsection (c)(4)(A) if Staff determines there is an “insufficiency.” Such incremental changes, entity by entity, could create inconsistencies with other applicable requirements to which entities are bound for compliance, such as Regional Transmission Organizations (“RTO”) and North American Electric Reliability Council (“NERC”) requirements, and could cause inconsistency among entities and their approaches to the subject matters in the EOPs. Affected entities should also have the ability to seek Commission review of such suggested changes by Staff. However, as a practical matter, it is likely that most EOP adjustments can be resolved between Staff and the affected entity. To accommodate these dynamics, SPS suggests an edit to (c)(4)(A) to reflect a balanced approach. Proposed subsection (c)(4)(B) is similarly concerning as providing undue discretion on the part of Staff to require changes to EOPs through “feedback” and providing no review process for the affected entities. Again, in most instances Staff and the affected entities will likely be able to work out issues. SPS suggests deleting subsection (c)(4)(B) as the issue is subsumed in (c)(4)(A) as revised by SPS suggested edits.

SPS suggests the following revisions in proposed subsection (c):

~~(c)(1) An entity must file an a comprehensive summary of the EOP under this section within 90 days of final adoption of this rule in accordance with the terms of paragraph (d) and shall file updates in accordance with paragraph (c)(4) by April 1, 2022. Beginning in 2023, an entity must annually file an EOP no later than February 15 in the manner prescribed by the commission.~~

(c)(1)(A) An entity must file with the commission a the comprehensive summary of the EOP, as set forth in subsection (d) of this rule, and maintain a complete, unredacted EOP

which can be made available for visible inspection by employees or authorized representatives of the commission who have signed a Commission-approved protective order.

* * *

(c)(1)(C) Beginning in 2023, the annual EOP summary must include, for each ~~incident~~ emergency in the prior calendar year that required the entity to activate its EOP, a summary after-action report that includes lessons learned and ~~an outline~~ a summary of changes the entity made to the EOP as a result.

* * *

(c)(4)(A) An entity must file an updated EOP summary if commission staff reasonably determines that the entity's summary of the EOP on file does not contain sufficient information to determine whether the entity can provide adequate electric service through an emergency.

~~(c)(4)(B) An entity must file an updated EOP summary in response to feedback provided from commission staff.~~

(c)(4)(C) An entity must file an updated EOP summary if the entity makes a significant change to its EOP. A significant change to an EOP include a change that has a material impact on how the entity would respond to an emergency. The entity must file the updated EOP summary with the commission no later than 30 days after the change takes effect.

(d) Information to be included in the emergency operations plan.

Summary EOP Requirement

As discussed above, SPS proposes that affected entities be required to file a comprehensive summary of the EOP with the Commission and maintain a confidential and complete EOP at the affected entity's facilities. SPS recommends replacing proposed subsection(d) with the language below that would set forth the information which must be included in the EOP summary. The EOP summary include an executive's affidavit as set forth in the current subsection (d)(4) as well as an index of the annexes included in the full EOP maintained by the utility.

REVISED NEW subsection (d):

(d) **Energy operations plan summary.** An entity's EOP summary must address both common operational functions that can be used for every type of emergency and an index of the annexes that outline the entity's response to the types of emergencies specified in subsection (f). Each entity's EOP summary must include the following information.

(1) An approval and implementation section that:

(A) introduces the EOP and outlines its applicability; and

(B) the date the EOP was most recently approved by the entity.

(2) An index of the annexes contained within the complete EOP, as maintained by the utility, which address the entity's response to the types of emergencies specified in subsection (f). The outline should contain the date each annex was last reviewed and approved by the entity.

(3) An affidavit from the entity's highest-ranking representative, official, or officer with binding authority over the entity affirming the following:

(A) relevant operating personnel are familiar with and have received training on the contents of the EOP, and such personnel are committed to following the EOP except to the extent deviations are appropriate as a result of specific circumstances during the course of an emergency.

(B) the EOP has been reviewed and approved by the appropriate executives;

(C) required annual drills have been conducted;

(D) an appropriate summary of the EOP has been distributed to local jurisdictions as needed;

(E) the entity maintains a business continuity plan that addresses returning to normal operations after disruptions caused by an emergency; and

(F) the entity's emergency management personnel who are designated to interact with local, state, and federal emergency management officials during emergency events have received National Incident Management System training, specifically IS-700.a, IS-800.b, IS-100.b, and IS-200.b.

If the Commission accepts SPS's recommendation regarding filing requirements, SPS would propose re-formatting subsection (d) and re-title to subsection (e) and (e) retitled to "Information to be included in the emergency operations plan to be maintained by the utility subject to inspection" and the remaining subsections reformatted accordingly.

Full EOP Provisions, revisions

Listing of individuals maintaining and changing the EOP - (d)(1)(B) - delete

Maintaining a list of individuals responsible for maintaining and implementing or changing the EOP is unduly burdensome as the company's management is responsible for

making changes in accordance with leadership structure, each applicable member of which is responsible for compliance; and the individuals would be constantly changing as employees are hired, assigned, reassigned, and leave the company. Thus, this requirement to continually provide updates would be unduly burdensome and not useful. SPS recommends deleting (d)(1)(B) entirely.

Maintaining a list of employees receiving the EOP - (d)(2) – delete

The EOP, and all its elements, are operational procedures of wide applicability. It would be unduly burdensome to provide lists of recipients as there are large numbers of employees that must comply with various aspects of the EOP and thus will receive it or portions thereof; and such list would be constantly changing as employees are hired, assigned, reassigned, and leave the company. Clearly, the EOP is a company obligation and all applicable employees must comply with its directives. This reporting requirement would be unduly burdensome to implement, is superfluous, and should be deleted.

List of emergency contacts for the entity (d)(3) – delete, replace with secure process in (g)

It would highly problematic to have contact information for utility employees who are instrumental to utility restoration efforts to become public knowledge as they could be inundated with emails and phone calls when their attention needs to be focused on restoring service. SPS recommends striking this language. The Commission must have this information, of course, and it should be timely updated. Instead, SPS suggests that this information be provided to the Commission by way of a secure electronic portal. Please see suggested language in subsection (g).

Communications plan - (d)(5) - scope

In keeping with the comments above, proposed (d)(5)(A) and (B) should be modified as follows:

(d)(5)(A) An entity with transmission and distribution service operations must describe the procedures during an emergency for handling complaints and for communicating with the public

(d)(5)(B) An entity with generation operations must describe the procedures during an emergency for communicating with the public

(e) Annexes to be included in the emergency operations plan.

Cyber Security and Physical Security Incident Annexes

(e)(1)(G)-(H) and (e)(2)(G)-(H) - delete

Cyber security and physical security information is by its nature highly sensitive and any disclosures can have dire consequences. Including any part of it in the EOP, even in summary format, would create significant risks of critical protective measures being disclosed publicly and potentially to bad actors, creating grave security risks. These are high priority matters in the electric service industry, and electricity market participants must comply with NERC Critical Infrastructure Protection (“CIP”) standards and protocols to protect physical and cyber assets, inclusive of planning and response to emergency conditions. In addition, the Commission is separately engaged with these issues pursuant to 16 TAC § 25.367, *Cybersecurity Monitor*, regarding cyber security coordination and monitoring programs overseen by a Commission-employed cyber security monitor. SPS suggests that the Commission not bring those sensitive matters to the EOP process, which is more focused on operational matters. SPS recommends deleting proposed subsections (e)(1)(G)-(H) and (e)(2)(G)-(H).

(f) Drills.

SPS proposes in this section, consistent with the rest of the rule, to replace “incident” with “emergency.” Therefore, SPS suggests the following revision:

(f) An entity must conduct or participate in one or more drills annually to test its EOP if its EOP has not been implemented in response to an ~~incident~~ emergency within the last 12 months.

(g) Reporting requirements.

With regards to reporting obligations, the proposed rule eliminates the qualification in the current rule that after action reporting can be requested after emergency events “declared by the Governor of the State of Texas or the President of the United States of America” In keeping with the comments above regarding the definition of Emergency discussed above, SPS’s recommends that if SPS’s comments on the definition of “emergency” is not accepted, the qualification regarding such events for the purpose of after action reporting be limited as discussed above, to those instances where an emergency has been declared by “a local, state, or federal government; ERCOT, or a Reliability Coordinator that is applicable to the entity.” This will ensure that this reporting requirement is appropriately scoped to target events that present a credible risk to the continuity of service and only be classified as an emergency in this context if the circumstances are of sufficient magnitude that emergency conditions are declared by entities empowered to coordinate regional or state-wide responses to such event. In addition, in keeping with the comments above regarding the deletion of subsection (d)(3) above, SPS suggests language in support of a requirement to provide emergency contact information to the Commission via a electric portal or other secure mechanism. SPS suggests the following edits:

(g) Reporting requirements. An entity required to prepare and maintain an EOP shall submit to commission staff a list of emergency contacts for the entity, including identification of single points of contact during an emergency, using a secure, electronic method and form prescribed by commission staff, and regularly update this information in such method and form; commission staff shall maintain this information as confidential. Upon request by commission staff during an activation of the State Operations Center by TDEM, an entity must provide updates on the status of operations, outages, and restoration efforts. Updates must continue until all incident-related outages are restored or unless otherwise notified by commission staff. After an emergency [if comments regarding the definition of “emergency is not accepted:] declared by local, state, or federal government; ERCOT, or a Reliability Coordinator that is applicable to

the entity, commission staff may require an affected entity to provide an after action or lessons learned report and file it with the commission by a date specified by commission staff.

III. Conclusion

SPS appreciates the opportunity to provide comments on this important Commission rulemaking. SPS reserves the right to make additional comments in response to other commenters and the Commission in the course of this rulemaking project.

Respectfully submitted,

/s/ Mark A. Walker

XCEL ENERGY SERVICES INC.

Mark A. Walker
State Bar No. 20717318
919 Congress Avenue, Suite 900
Austin, Texas 78701
Office: (512) 236-6926
Facsimile: (512) 236-6935
e-mail: mark.a.walker@xcelenergy.com

ATTORNEY FOR SOUTHWESTERN PUBLIC
SERVICE COMPANY

PROJECT NO. 51841

REVIEW OF 16 TAC §25.53	§	
RELATING TO ELECTRIC	§	PUBLIC UTILITY COMMISSION
SERVICE EMERGENCY	§	OF TEXAS
OPERATIONS PLANS	§	

EXECUTIVE SUMMARY - COMMENTS OF SOUTHWESTERN PUBLIC SERVICE COMPANY

SPS respectfully makes the following major recommendations:

1. Revise the definition of “emergency” to align with event declarations of appropriate governmental and Regional Coordinator authorities;
2. For the purposes of clarity, use the term “emergency” instead of the term “incident” throughout the replacement rule;
3. Modify filing requirements to a comprehensive summary of the EOP and the entire EOP would be maintained internally and made available for Commission inspection, and eliminate the requirement to provide any unredacted EOP information from filing requirements; this change addresses risks of release of confidential and security-sensitive information by way of exposure to Texas Public Information Act requests, and mitigates high burdens on the Commission and affected entities to oppose and litigate open records requests;
4. Add a revised new subsection setting forth the scope of EOP summaries to be filed;
5. Provide a more balanced approach for Commission Staff suggesting modifications to EOPs;
6. Remove listings in the EOP of employees and management regarding development, modification and distribution of EOPs as needlessly burdensome and inconsistent with premise that all employees must comply;
7. Emergency contacts should be provided by a secure portal and updated and not provided in EOPs;
8. Remove cyber and physical security from EOPs as redundant of other Commission oversight activities, risks of secure information release, and not in scope with this rule; and
9. Modify reporting requirements for consistency with other comments, define emergency events and related after action reporting, and create a secure electronic reporting process for providing emergency contact information.